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OGC 76-0653

9 February 1976

Executive Registry


76-6770/2

MEMORANDUM FOR THE RECORD

SUBJECT: Restrictions Executive Order

At the draft session on 9 February it is clearly understood that the definitions of "foreign intelligence" and "foreign counterintelligence" were limited to the purposes of the Executive order in view of the fact that there are other definitions for other purposes in various documents, including NSCIDs.

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JOHN S. WARNER
General Counselcc: SC/DCI
ADD's Group

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THE WHITE HOUSE
WASHINGTON

Executive Registry

76-220/1

February 10, 1976

MEMORANDUM FOR

PHIL BUCHEN
DON OGILVIE
BILL HYLAND
NINO SCALIA
BOB ELLSWORTH
HAL SAUNDERS
MITCH ROGOVIN

FROM:

TIM HARDY

SUBJECT: Restrictions Executive Order

Attached is the draft of the restrictions order that was agreed to at yesterday's drafting session. Sections that have been changed from the February 6 ICG Draft have been underlined.

The question of inclusion of the proviso on CIA electronic surveillance in Section II(b) is noted as an issue that will be presented to the President. If that proviso is deleted, Section IV(a) on electronic surveillance testing will also be deleted.

Unresolved at yesterday's meeting was the issue of collection by foreign intelligence agencies of foreign intelligence or counter-intelligence information on the domestic activities of U.S. persons when that information was originally gathered by non-foreign intelligence agencies, including the FBI. We would make the following proposal to solve the problem:

Add to Section II(g) the following sections:

(6) Information concerning persons or activities that pose a clear threat to foreign intelligence agency facilities or personnel, provided that such information is retained only by the foreign intelligence agency threatened and that proper coordination with the Federal Bureau of Investigation is accomplished.

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(7) Foreign intelligence concerning corporations or other commercial organizations received from non-foreign intelligence agencies, provided that the information was lawfully obtained by such non-foreign intelligence agencies.

And, add to Section III:

(3) dissemination to foreign intelligence agencies of information of the subject matter types listed in Section II(g).

ICG DRAFT - 2/9/76

EXECUTIVE ORDER

Information about the capabilities, intentions and activities of other governments is essential to informed decision-making in the field of national defense and foreign relations. The measures employed to acquire such information should be responsive to the legitimate needs of our Government and must be conducted in a manner which preserves and respects our established concepts of privacy and our civil liberties.

Recent events have clearly indicated the desirability of government-wide direction which will ensure a proper balancing of these interests. The rules of operation prescribed by this Order are extend, or not intended to derogate from, any other laws, regulations or directives relating to the activities of our foreign intelligence agencies. Unless otherwise specified, /the provisions of this Order apply to activities both inside and outside the United States.

By virtue of the authority vested in me as President pursuant to my powers under Article II, Sections 2 and 3 of the Constitution, and statutes of the United States, including the National Security Act of 1947, and finding such actions necessary in the national interest, it is hereby ordered as follows:

SECTION I: Definitions.

As used in this Order, the following terms shall have the meanings ascribed to them below:

(a) "Collection" means any one or more of the gathering, analysis, dissemination or storage of non-publicly available information without the informed express consent of the subject of the information.

(b) "Electronic surveillance" means acquisition of a non-public communication by electronic means, without the consent of a person who is a party to, or, in the case of a non-electronic communication, visibly present at, the communication.

(c) "Employee" means a person employed by, assigned or detailed to, or acting for a United States foreign intelligence agency.

(d) "Foreign intelligence" means information concerning the capabilities, intentions and activities of any foreign power, or of any non-United States person, whether within or outside the United States, or concerning areas outside the United States.

(e) "~~Foreign~~ Counterintelligence" means information concerning the protection from detection or disclosure of foreign intelligence or of national security information and its collection.

(f) "Foreign intelligence agency" means the Central Intelligence Agency, National Security Agency, Defense Intelligence Agency, and further includes any other department or agency of the United States Government or component thereof while it is engaged in the collection of foreign intelligence or foreign counterintelligence, but shall not include any department, agency or component thereof to the extent that it is civil or criminal engaged in its authorized/law enforcement functions; nor shall it include in any case the Federal Bureau of Investigation.

(g) "National security information" has the meaning ascribed to it in E. O. 11652.

(h) "Physical surveillance" means continuing visual observation by any means, or acquisition of a non-public communication by a person not a party thereto or visibly present thereat through any means which does not involve electronic surveillance.

(i) "United States persons" means United States citizens, aliens admitted to the United States for permanent residence and corporations or other organizations incorporated or organized in the United States.

SECTION II. Restrictions on Collection.

Foreign intelligence agencies shall not engage in any of the following activities:

(a) Physical surveillance directed against a United States person, except a lawful surveillance pursuant to procedures approved by the head of the foreign intelligence agency and directed against either:

(1) a present or former employee of such agency, its present or former contractors or their present or former employees, for the purpose of protecting foreign intelligence or ~~foreign~~ counterintelligence / sources or methods or national security information from unauthorized disclosure; or

(2) a United States person, who is in contact with either such a present or former contractor or employee or with a non-United States person who is the subject of a foreign intelligence or ~~foreign~~ counterintelligence inquiry, but only to the extent necessary to identify such United States person; or

(3) a United States person outside the United States who is reasonably believed to be acting on behalf of a foreign power or engaging in international terrorist or narcotics activities or activities threatening the national security.

(b) Electronic surveillance involving a communication which is made from, or is intended by the sender to be received in, the United States, or directed against United States persons abroad except lawful electronic surveillance under procedures approved by the Attorney General; provided that the Central Intelligence Agency shall not directly or indirectly engage in electronic surveillance directed against United States persons within the United States;

(c) Unconsented physical searches within the United States; or unconsented physical searches directed against United States persons abroad, except lawful searches under procedures approved by the Attorney General;

(d) Opening of mail or examination of envelopes of mail in the U.S. Postal channels except in accordance with law.

(e) Examination of Federal tax returns or tax information except in accordance with United States law.

(f) Infiltration or undisclosed participation within the United States in any organization for the purpose of reporting on or influencing its activities or members;

(g) Collection of information concerning the domestic activities of United States persons except:

(1) Information concerning corporations or other commercial organizations controlled by foreign powers.

(2) Information concerning present or former employees, present or former contractors or their present or former employees or applicants for such employment or contracting, or ~~foreign~~ counterintelligence necessary to protect foreign intelligence/sources or methods or national security information from unauthorized disclosure; and the identity of persons in contact with the foregoing or with a non-United States person who is the subject of a foreign intelligence or ~~foreign~~ counterintelligence inquiry.

(3) Information concerning persons who are reasonably believed to be potential sources or contacts, but only for the purpose of determining the suitability or credibility of such persons.

(4) Foreign intelligence or counterintelligence gathered abroad or from electronic surveillance conducted in compliance with Section III (b); or foreign intelligence acquired from cooperating sources in the United States.

(5) Information about a United States person who is reasonably believed to be acting on behalf of a foreign power or engaging in international terrorist or narcotics activities.

SECTION III. Dissemination and Storage

Nothing in this Order shall prohibit:

(a) Lawful dissemination to the appropriate law enforcement agencies of incidentally gathered counterintelligence or other information indicating involvement in activities in violation of United States law.

(b) Storage of information required by law to be retained.

SECTION IV. Restrictions on Testing and Experimentation.

Foreign intelligence agencies shall not engage in:

(a) Testing of electronic surveillance equipment within the United States except under procedures approved by the Attorney General consistent with law; or

(b) Experimentation with drugs on human subjects, except with the informed consent, in writing and witnessed by a disinterested third party, of each such human subject and in accordance with the guidelines issued by the National Commission for the Protection of Human Subjects for Biomedical and Behavioral Research.

SECTION V. Assistance to Law Enforcement Authorities.

No foreign intelligence agency shall, except as expressly authorized by law:

(a) Provide services, equipment, personnel or facilities to the Law Enforcement Assistance Administration or to State or local police organizations of the United States.

(b) Participate in or fund any law enforcement activity within the United States.

These prohibitions shall not, however, preclude (i) cooperation between a foreign intelligence agency and appropriate law enforcement agencies for the purpose of protecting the personnel and facilities of the foreign intelligence agency or preventing espionage or other criminal activity related to foreign intelligence or counterintelligence or (ii) provision of specialized equipment or technical knowledge for use by any other Federal department or agency.

SECTION VI. Assignment of Personnel.

An employee of a foreign intelligence agency detailed elsewhere within the Federal Government shall be responsible to the host agency and shall not report to his parent agency on the affairs of the host agency, except as may be directed by the latter. The head of the host agency, and any successor, shall be informed of the detailee's association with the parent agency.

SECTION VII. Law Enforcement Responsibilities.

Nothing in this Order shall limit the law enforcement functions, civil or criminal, of any department, agency, or component thereof.

SECTION VIII. Implementation.

Each foreign intelligence agency shall, within 90 days, issue internal directives to implement this Order with respect to its foreign intelligence operations.